

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re	:	Chapter 7
	:	
Wilton Armetale, Inc. a/k/a	:	
WAPITA, Inc.,	:	
Debtor.	:	Case no. 16-16779 (REF)

Artesanias Hacienda Real S.A. de C.V.,	:	
Plaintiff,	:	Adversary No. 17-0197 (JKF)
	:	
v.	:	
	:	
North Mill Capital, LLC and	:	
Leisawitz Heller,	:	
Defendants.	:	

**STATUS REPORT OF DEFENDANT, LEISAWITZ HELLER,
PURSUANT TO THE COURT’S MARCH 20, 2018 ORDER**

Pursuant to this Court’s March 20, 2018 Order, defendant, Leisawitz Heller, submits the following report on the status of the above-captioned matter, including any outstanding motions.

1. This action was commenced by Artesanias Hacienda Real S.A. de C.V. (“Artesanias”) by complaint on August 2, 2016 in the United States District Court for the Eastern District of Pennsylvania against Leisawitz Heller and North Mill Capital LLC. *See* Bankr. ECF No. 9 (Parts 2-24); District Court ECF No. 1. The claims asserted against Leisawitz Heller were for conspiracy and fraudulent transfer.
2. Leisawitz Heller’s motion to dismiss Artesanias’ complaint pursuant to Fed. R. Civ. P. 12(b)(6) was granted by order dated December 16, 2016. *See* Bankr. ECF No. 10 (part 25); District Court ECF No. 35. The District Court determined Artesanias failed to state claims for conspiracy or fraudulent transfer against Leisawitz. *Id.* The intracorporate conspiracy doctrine “which immunizes an attorney from allegations of conspiring with his or her client, unless the attorney’s actions fall outside the scope of representation and are taken for the attorney’s sole personal benefit” barred plaintiff’s conspiracy claims because: (1) Artesanias’ claims were based on Leisawitz’s alleged conspiracy with its client, Ivan Jeffery; and (2) Artesanias did not allege facts which made it plausible that Leisawitz acted outside the scope of its

representation of Jeffery and for its sole personal benefit. *Id.* The conspiracy claims also failed because Artesanias did not allege facts to make plausible the requisite malice for a conspiracy claim, *i.e.*, that the alleged conspirators acted with the sole purpose of injuring Artesanias. Artesanias' claim against Leisawitz for alleged violation of the Pennsylvania Uniform Fraudulent Transfer Act ("PUFTA") failed to state a claim because plaintiff did not allege Leisawitz was a person or entity from whom PUFTA permits recovery, *i.e.*, a transferee or a person for whose benefit a transfer was made. *Id.* The District Court's order permitted Artesanias to file an amended complaint to the extent Artesanias believed it could cure the pleading deficiencies identified for the claims asserted against Leisawitz Heller. *Id.*

3. On January 3-5, 2017, Artesanias filed a first amended complaint against Leisawitz Heller and North Mill Capital LLC. *See* Bankr. ECF No. 11 (parts 1-6); District Court ECF No. 38.

4. Leisawitz Heller and North Mill moved to dismiss the first amended complaint pursuant to Fed. R. Civ. P. 12(b)(6). *See* District Court ECF Nos. 39 (North Mill), 40 and 41 (Leisawitz Heller). The motions to dismiss the first amended complaint were fully briefed by the parties by March 6, 2017. *See* District Court ECF Nos. 45, 46, 50, 51.

5. Oral argument on the motions to dismiss the first amended complaint was held before the Honorable Edward G. Smith on April 7, 2017. *See* Bankr. ECF No. 11 (part 17); District Court ECF No. 57. Judge Smith directed the parties to file supplemental briefs to address whether it was appropriate for the case to be resolved independent of the Wilton bankruptcy action. *See* Bankr. ECF No. 11 (part 15); District Court ECF No. 58. As directed, supplemental briefs and responses thereto were filed by all parties. *See* District Court ECF Nos. 64, 65, 66, 68, 69, 70 and 71.

6. Judge Smith, by order dated July 12, 2017, referred this case to the Bankruptcy Court for the Eastern District of Pennsylvania and directed that it be docketed as an adversary proceeding in the Wilton Bankruptcy, Docket No. 16-16779. *See* Bankr. ECF No. 1; District Court ECF No. 79.

7. Judge Smith did not decide the defendants' motions to dismiss Artesanias' first amended complaint prior to the transfer and the motions remain outstanding. The following documents from the District Court dockets relate to the outstanding motions to dismiss:

First Amended Complaint	ECF No. 38
North Mill and Leisawitz Heller Motions to Dismiss	ECF Nos. 39, 40, 41
Artesanias Responses to Motions	ECF Nos. 45, 46
North Mill and Leisawitz Heller Reply Briefs	ECF Nos. 50, 51
Court Ordered Supplemental Briefing	ECF Nos. 64, 65, 66
Responses to Supplemental Briefing	ECF Nos. 68, 69, 70, 71

8. With regard to discovery, the District Court, by its Amended Scheduling Order dated March 9, 2017, set a discovery deadline of June 15, 2017. *See* Bankr. ECF No. 11 (Part 12); District Court ECF No. 53. However, the District Court, by order dated April 10, 2017, stayed all deadlines in the amended scheduling order pending resolution of the outstanding motions to dismiss. *See* Bankr. ECF No. 11 (part 15); District Court ECF No. 58.

9. To date, the parties have engaged in some written discovery and no depositions have been taken.

10. The only other outstanding motion is Artesanias' letter motion for *in camera* inspection and to compel production of documents withheld by Leisawitz Heller on grounds of attorney-privilege. *See* District Court ECF No. 78. The transfer of this action was ordered prior to Leisawitz Heller's response to the motion was due and, as such, Leisawitz Heller has not yet responded to the motion.

11. Leisawitz Heller requests that discovery be stayed pending disposition of the outstanding motions to dismiss the first amended complaint.

Respectfully submitted,

/s/Kathleen M. Carson
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Attorneys for Defendant,
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Dated: April 6, 2018

CERTIFICATE OF SERVICE

Kathleen M. Carson certifies that she caused the foregoing Status Report of Defendant, Leisawitz Heller, Pursuant to the Court's March 20, 2018 Order to be served on all counsel listed below via the Court's ECF system on April 6, 2018.

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/s/Kathleen M. Carson